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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,544	11/26/2003	Tony D. Wartian	2936.3001.001	9737

23399 7590 03/22/2005

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EXAMINER
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LAVINDER, JACK W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/723,544

Applicant(s)

WARTIAN ET AL.

Examiner

Jack W. Lavinder

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen, 5829103 in view of Parveris, 5555607, and Barry, 3983602.

Regarding claim 1, Allen discloses a strip of flexible resilient material having

- a base (bottom of clip in figure 1)
- a first upwardly extending leg (11)
- a second upwardly extending leg (13) spaced from the first leg
- a third leg (16), with barbs (19), upwardly extending from the base between and spaced from the first (11) and second (13) legs
- a substantially straight first generally u-shaped channel formed by the first (11) and third legs (16) having an open upper end
- a second upwardly opening channel formed by the second (13) and third (16) legs
- a pencil receiving slot for receiving a pencil (32)

Allen fails to disclose and a step tongue located between the second and third legs, wherein the tongue extends from an outer extremity of the second leg downwardly into a second channel in spaced relation to the second and third legs.

Parveris discloses a stepped tongue (31, figure 2) extending from an outer extremity of a leg (22) cooperating to provide a generally v-shaped opening slot (figure 1) for gripping an elongated article (16) and for holding elongated articles of different sizes (col. 4, lines 55-61).

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It would have been obvious to a person having ordinary skill in the art to have added Parveris's stepped gripping tongue to Allen's pencil slot to add versatility to the pencil holder by providing a means for holding pencils of different sizes.

Allen discloses a third leg (16) having barbs (19) but fails to disclose a first leg (11) having barbs.

Barry discloses a helmet clip pencil holder having a first and third leg (9, 10) having barbs (16) for securely retaining the clip to the helmet (column 2, lines 20-24).

It would have been obvious to a person having ordinary skill in the art to add Barry's additional barbs to Allen's first leg in order to improve the retention strength of the pencil holder to the cap.

### ***Response to Arguments***

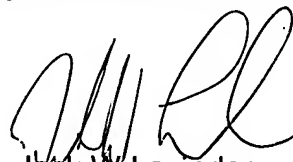
2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 703-308-3421. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack W Lavinder  
Primary Examiner  
Art Unit 3677

3/7/05